

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

DANIEL PAGAN-HERMINA, ET AL.,  
Plaintiffs,

v.

HOSPITAL DOCTOR SUSONI, ET AL.,  
Defendants.

Civ. No. 20-1761 (MDM)

**ORDER**

In the present case, co-defendant Dr. Christopher Vega (“Dr. Vega”) was Ordered to submit his expert report no later than December 2, 2021, after having failed to comply with the prior deadline. On December 2, 2021, Dr. Vega produced his expert report, however, he produced it in Spanish only. Knowing that plaintiffs’ expert does not understand Spanish and knowing that plaintiffs’ expert was scheduled to be deposed in the coming weeks, counsel for Dr. Vega agreed to provide plaintiffs’ a copy of Dr. Vega’s expert report in English by the week of December 6, 2021. To this day, however, counsel has yet to produce the report in English and such omission has prejudiced the plaintiffs in their ability to prosecute their claims in this case.

For that reason, the plaintiffs request that Dr. Vega’s expert report be stricken, and that he be precluded from using an expert to defend himself in this case. The Court must say that counsel’s overt lack of civility is indeed shocking and demonstrates a patent lack of accountability for his continued failure to comply not only with the Court’s discovery orders, but also with the parties’ internal discovery deadlines and agreements. It is also quite revealing that counsel for Dr. Vega did not even attempt to excuse his disobedience, nor argue that his noncompliance was substantially justified or was somehow harmless. In addition, despite his having agreed to provide the plaintiffs with a copy of the expert report in English, he now claims that he is under no obligation to do so. *United States v. Rivera-Rosario*, 300 F.3d 1, 6 (2002) (it is the independent duty

of the district court to make sure that “[a]ll pleadings and proceedings . . . be conducted in the English language.”).

Counsel’s conduct is indefensible and inexcusable, and his lack of accountability cannot be met with impunity. To that effect, Federal Rule of Civil Procedure 37(b) gives the district court a “veritable arsenal of sanctions” for failure to comply with discovery orders. *Malot v. Dorado Beach Cottages Assocs.*, 478 F.3d 40, 44 (1st Cir. 2007); *Crispin-Taveras v. Municipality of Carolina*, 647 F.3d 1, 7 (1st Cir. 2011). Although striking Dr. Vega’s expert report and precluding him from testifying at trial is certainly within the Court’s arsenal, the Court will instead adopt a slightly less drastic but nevertheless stinging option of imposing a punitive monetary sanction against counsel, pursuant to Fed. R. Civ. P. 37. *See, Media Duplication Services v. HDG Software*, 928 F.2d 1228, 1242 (1st Cir. 1991) (where the First Circuit stated that it “ha[s] no hesitation in endorsing the use of punitive monetary sanctions as a means of deterring neglect of th[e] obligation[s] counsel owe to the court[.]”).

Based on the foregoing, the Court **GRANTS in part and DENIES in part** plaintiffs’ [36] “Motion to strike defendant Christopher Vega’s expert Dr. Marcial Gomez.” Accordingly, based on counsel’s repeated disregard of the Court Orders and inexcusable violations of discovery deadlines and agreements made between the parties, **Counsel Igor Dominguez-Pérez is ORDERED to pay a punitive monetary sanction in the amount of \$500.** Such sanction shall be made payable to the “Clerk, U.S. District Court,” and shall be paid no later than COB, Monday, March 14, 2022. Counsel Dominguez-Pérez shall inform the Court via motion immediately upon effectuating payment. Dr. Vega and his counsel are further **ORDERED** to file a Certified English Translation of the expert report, **UNDER SEAL, “Selected Parties Only,” by March 23, 2022, and** to send a copy of the report in English to plaintiff’s counsel by that same day. Failure to comply with this Order may result in the imposition of further sanctions, including, but not limited to, excluding Dr. Vega’s expert report and prohibiting him from testifying at trial.

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**IT IS SO ORDERED.**

In San Juan, Puerto Rico, this 9th day of March 2022.

  
MARSHAL D. MORGAN  
United States Magistrate Judge

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